

REMARKS

Status of the claims

Claims 25-29 and 34 are pending and claim 34 is under consideration in this application, claims 1-24 and 30-33 having been cancelled without prejudice to their being pursued in a separate application and claims 25-29 having been withdrawn for allegedly being drawn to separate inventions. Claim 34 stands rejected.

The above amendments to claim 34 are supported by the specification. Support for the term "exposed" can be found, for example, at page 29, third line of paragraph 3. Support for the expression "applied" can be found, for example, at page 8, third line of paragraph 3 and at the third line of page 29.

35 U.S.C. §102(e) rejections

Claim 34 stands rejected as allegedly being anticipated by U.S. Patent No. 6,180,597 (the '597 patent) and U.S. Patent No. 5,851,786 (the '786 patent).

In that neither the '597 patent nor the '786 patent discloses "applying *Clostridium botulinum* ADP-ribosyl transferase directly to an exposed central nervous system (CNS) lesion site in a patient or an exposed peripheral nervous system (PNS) lesion site in a patient", as required by amended claim 34, neither reference anticipates the claim.

The Examiner indicates that claim 34 is not entitled to the priority date of the priority document. In that the Applicants have substantively distinguished claim 34 from the cited art, the issue of priority is moot. However, Applicants do not acknowledge that the '597 patent is necessarily prior art with respect to the instant application.

In light of the above considerations, Applicants request that the rejections under 35 U.S.C. §102(e) be withdrawn.

CONCLUSION

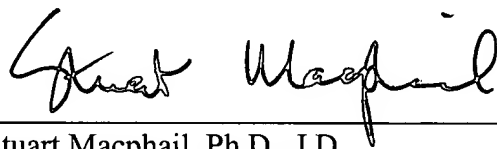
In summary, for the reasons set forth above, Applicants maintain that claim 34 patentably defines the invention. Applicants request that the Examiner reconsider the rejections as set forth in the Office Action, and permit claim 34 to pass to allowance.

If the Examiner would like to discuss any of the issues raised in the Office Action, Applicants' undersigned representative can be reached at the telephone number listed below.

Enclosed is a Petition for an Extension of Time with the required fee. Please charge any other fees or make any credits to Deposit Account No. 06-1050, referencing Attorney Docket No. 12552-002001.

Respectfully submitted,

Date: 12/9/03



Stuart Macphail, Ph.D., J.D.
Reg. No. 44,217

Fish & Richardson P.C.
45 Rockefeller Plaza, Suite 2800
New York, New York 10111
Telephone: (212) 765-5070
Facsimile: (212) 258-2291